IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10928 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BHUPENDRA PREMJI MALI (MARWADI

Versus

THE STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 10928 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Pandya for ld. counsel Ms. KU Mishra for the petitioner detenu and ld. AGP Ms.

HB Punani for the otherside. Affidavit in reply submitted on behalf of Commissioner of Police, Ahmedabad, tendered today is taken on record.

2. Heard ld. counsel Mr. Pandya for ld. counsel Ms. KU Mishra for the petitioner detenu. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 28.05.2004 passed by the Police Commissioner, Ahmedabad City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved involved in 3 different offences punishable under Sections 66B, 65AE of the Bombay Prohibition Act between 18.05.2003 and 22.04.2004, as mentioned in the tabular form in the grounds of detention page-1 conveyed to the petitioner detenu at the time of execution of the order of detention dated 28.05.2004. Of course, no statements of witnesses were before the detaining authority because sponsoring authority has not recorded the statements in the present case. So, papers of all the three cases referred to in the grounds of detention were placed before the detaining authority for obtaining order of detention. It is submitted that mere registration of three different criminal offences may not be sufficient for recording subjective satisfaction to conclude that the activities of the present petitioner as bootlegger had potential to threat the maintenance of public order. The first offence was registered on 18.05.2003 and second one was registered on 12.06.2003. Thereafter, no actions were taken to pass the order of preventive detention. The third offence referred to and relied upon by the detaining authority is registered on 22.04.2004. It is rightly argued by ld. counsel Mr. Pandya that there is a time gap of about 8 months between the 2nd and 3rd offence and in view of that the subjective satisfaction recorded by the detaining authority is vitiated.

4. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Mr. Pandya for the petitioner, has taken this Court

through the contentions raised in the petition. However, he has focussed his arguments mainly on one grounds. He has submitted that the subjective satisfaction of the detaining authority has been recorded mechanically. The Sponsoring authority has not cared to record the statements. He has pressed into service the ground of delay in passing the order of detention and that too on un-explained delay. The last case registered against the petitioner is on 22.04.2004 and the order of detention is passed on 28.05.2004. Thus, there is a delay of about 1 month and 06 days. Even the petitioner was arrested in connection with the aforesaid offence on 22.04.2004 and from the date of his arrest also, there is a delay of about 1 month and 06 days days in passing the order of detention. This delay ought to have been explained reasonably by the other side by furnishing details. It is also pertinent to note that no other record other than the papers of chargesheet of the registered case were placed before the detaining authority. It was also possible for the sponsoring authority to place relevant papers before the detaining authority at the earliest if really preventive measures were required tobe taken immediately. The Court is satisfied with that there is no explanation much less reasonable explanation for not passing the order of detention in couple of hours or days after receipt of the papers from sponsoring machinery. Though affidavit-in -reply tendered today which is taken on record, is filed, there is no satisfactory explanation as to the delay caused. Of course, in para-9 thereof, the detaining authority has attempted to explain the situation. The say of the detaining authority is that proposal was received on 25.04.2004. So, proposal was also sent at a belated stage. It may be an afterthought. So, explanation is not found satisfactory. Thus, the unexplained delay as stated above by the detaining authority vitiates the order of detention and it is rightly argued that it is violative of Articles 21 and 22(5) of the Constitution of India, as per settled legal position. So, this ground alone, coupled with other grounds pressed into service as aforesaid, the petition requires to be allowed.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 28.05.2004 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[ C.  K.BUCH, J]

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